Supreme Court, U.S.
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No. 00-

IN THE

Supreme Court of the United States

ISIDOR FARASH,

Petitioner,

v.

HONORABLE KERMIT LIPEZ; HONORABLE G. ARTHUR BRENNAN; WENDELL LARGE, ESQ.; ANDREW DOUKAS, ESQ.; ROBERT MITTEL, ESQ.; THE ADMINISTRATIVE OFFICES OF THE COURTS OF THE STATE OF MAINE; and JOHN CONNOR,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Must an offending party have purposefully intended for their actions to give rise to interstate jurisdiction in order for a Complainant's action to withstand a motion to dismiss based upon a lack of personal jurisdiction?

II. In a matter involving interstate jurisdiction where no evidentiary hearing is conducted, does the Court have to accept as true the allegations in Plaintiff's Complaint, including the allegations that a fair trial would not be available to him in another state?

III. If it can be shown that the judicial decisions which granted judges immunity from suit has produced the unintended adverse consequence of invalidating parts of the due process provisions of the United States Constitution, would there be a substantial and compelling public interest in the Court reevaluating the Doctrine?

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Appendix B — Opinion And Order Of The United States District Court For The District Of New Jersey Dated December 16, 1999 And Filed December 17, 1999 ..... 6a

Petitioner, Isidor Farash, respectfully requests that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit in *Farash v. Lipez*, case no. 00-5051, is unreported. (App. A). The opinion of the District Court in *Farash v. Lipez*, Civil Action Number 98-5795, is not published (App. B).

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit ("Court of Appeals") was entered on September 13, 2000.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in relevant part: "No person shall . . . be deprived of life, liberty, or property, without due process of law. . . ."

The Fourteenth Amendment to the United States Constitution provides in relevant part:

> Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of

the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. . . .

28 U.S.C. § 1332 states in pertinent part:

Diversity of Citizenship — Amount in controversy

(a) The District Court shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000., exclusive of interest and costs, and is between

(1) Citizens of different states

(2) Citizens of a state and citizens or subjects of a foreign state

STATEMENT OF THE CASE

Petitioner Farash filed the original Complaint in this action on December 18, 1998. The 12-count Complaint charges that the Defendants, in their official and individual capacities conspired to deprive the Plaintiff of his due process rights. Plaintiff Farash alleges that the Defendants impeded his ability to obtain a fair trial and appeal, in the State of Maine in contravention of the Fourteenth Amendment, and that they made various fraudulent misrepresentations

throughout the litigation in Maine. Farash is a long-term resident of New Jersey and resided in New Jersey throughout the litigation in Maine. The Complaint names the following Defendants: Hon. Kermit Lipez, a judge of the First Circuit Court of Appeals who previously served a judge of the Superior Court of Maine; Hon. Arthur Brennan, a judge of the Superior Court of Maine; Wendell Large, Andrew Doukas, John Connor, and Robert Mittel; attorneys practicing in Maine; and the Administrative Office of the Courts of the State of Maine. These Defendants served as the acting judges, opposing counsel, Plaintiff's counsel, Plaintiff's expert witness, and the judicial administrative office of the State of Maine.

Petitioner Farash maintains that the dismissal of this case by the United States District Court, District of New Jersey, would likely extinguish the few remaining civil rights left to Plaintiff Farash.

Petitioner has contacted over one hundred Maine lawyers in regards to the subject of this cause of action. Not only did all of the attorneys refuse to represent Isidor Farash, they also refused the request of the Petitioner to sponsor Petitioner's local New Jersey Attorney, so that he may enter a Pro Hac Vice appearance in accordance with the Main Rules of Court. The fact that the bar of the State of Maine has been unavailable should come as a surprise to no one, since Plaintiff Farash has named as Defendants in this actions both powerful jurists and leading members of the Maine bar.

Plaintiff Farash is maintaining that the Defendant Kermit Lipez acted while a Maine State Court judge, to disguise a conflict of interest in a case that he was deciding. Defendant Lipez, while hearing motions in Plaintiff's action in

Farash v. Clark Associates, Docket No. CU-88-576, failed to recuse himself, although he had a serious, obvious and a known conflict of interest which he was concealing. Justice Lipez went on the record and announced that he was returning and would rule on Defendant Clark Associates' pending motion, although the motion could not be decided that day under the Maine Rules of Court. Judge Lipez concealed the fact that one of the tortfeasors, Elizabeth Jackson, had been his private employee at the time when she, as an uninsured motorist, negligently injured the Plaintiff, Isidor Farash.

It was later revealed that the law firm, which had included Attorney Thaxter and then Attorney Lipez as partners, had actually provided Ms. Jackson with Pro Bono legal representation against Plaintiff in *Farash v. Jackson*, this being his original negligence suit. Judge Lipez was proceeding to revise the law of that case, under his own sanction. Judge Lipez did announce a previous conflict of interest pertaining to Mr. Thaxter and Gleason, but instead of recusing himself as he was already compelled to do under the rules, Judge Lipez used that conflict to bypass the Maine Rules of Court and postpone the trial date, ultimately entering a judgment in favor of the Defendants and capping Plaintiff's claim to a small fraction of its original amount.

Defendant G. Arthur Brennan is a jurist in the Maine State Courts. Defendant Brennan failed to report the transgressions of Judge Lipez when Plaintiff, in August, 1996, moved to vacate the Order of Judge Lipez. He failed to vacate Judge Lipez' Order in spite of knowing of Judge Lipez' concealed conflict of interest. Judge Brennan also failed to vacate the judgment in *Farash v. Clark Associates.* Judge Brennan placed the hearing on the Motion to Vacate on indefinite hold for approximately one year, in

contravention of the Maine Rules of Court. When the hearing was finally scheduled, it was not an evidentiary hearing, as had been requested by Movant. Lastly, Judge Brennan's decision on the Motion to Vacate was withheld from Movant Farash, until such time as Movant's time limit and therefore his ability to appeal the decision had expired.

Judges Lipez and Brennan conspired to deny Plaintiff Farash of his constitutional right to a fair trail. This damaged a New Jersey resident and these jurists fully understand where the consequences of their actions were to lie.

Defendants Mittel, Connor, Doukas and Large are members of the Maine bar who have acted to foreclose the civil rights of Plaintiff Farash. Defendant Connor, it is alleged, failed to pursue the claims of Petitioner with rigor and professional competence in the case of *Farash v. Clark Associates*. Plaintiff repeatedly asked Defendant Conner to obtain a transcript of a previous hearing before Judge Lipez, which was the substance of Plaintiff's action. Mr. Connor refused. This refusal by Connor constituted an intentional attempt to derail Plaintiff's case. Conner was at all times knowingly dealing with a New Jersey Resident.

Defendant Robert Mittel, Esq. received a retainer to act as a malpractice expert in a case brought by Plaintiff Farash in the State of Maine, captioned *Farash v. Andrew Doukas*. This retainer was drawn on a New Jersey bank. Not only did Mr. Mittel communicate with Farash, he also communicated with Farash's New Jersey counsel. Despite receiving a retainer, Defendant Mittel withdrew from the matter, thereby truncating Plaintiff Farash's ability to pursue a malpractice action against Defendant Andrew Doukas. One of the reasons Attorney Mittel provided for his withdrawal was his client's out-of-state status.

Defendant Wendell Large, Esq. acted during the case of *Farash v. Clark Associates* to diminish Farash's constitutional rights by misrepresenting crucial information to the court, thereby triggering a continuance of the trial date of December 21, 1992 in that matter. In the *Clark Associates* case, Attorney Large represented to the trial court that he had personally questioned two previously unannounced witnesses and that their knowledge and testimony was critical to the proper adjudication of Defendant's case. Plaintiff did not learn until June, 1996 that Attorney Large had not spoken to one of the two named witnesses and that the other witness later deposed and stated that he, a legal professional, had no knowledge of the case which was relevant. Moreover, Attorney Large's proposition that new witnesses, who were not on Defendant's mandatory 14 day witness list needed to be called on the morning of the trial was nonsensical, because they were being called based on the ruling of a previous motion, that had been decided months earlier. It was the official transcript of this matter that Attorney Connor later refused to order. Again, Plaintiff Farash' civil and constitutional rights were trampled upon by the actions of defendant attorneys.

The Defendant's motion for dismissal was scheduled to be heard on June 28, 1999. Plaintiff asked for both oral argument and an evidentiary hearing. These requests were denied. It was not until December, 1999 that Judge Walls granted the various Defendants' motion to dismiss.

Judge Walls' decision of December, 1999 held that the Plaintiff had not provided evidence of Defendants' contacts with the State of New Jersey. Petitioner had provided the court with a comprehensive Complaint and a certification of counsel, outlining the Defendants' contacts with New Jersey.

In lieu of an Answer to the Complaint, Defendants provided their motion to dismiss, which included a minimal amount of evidence, however, nothing which specifically contradicted any of Plaintiff's assertions. In an attempt to remedy the holding of Judge Walls, a motion was made and granted that allowed for the introduction of additional evidence of Defendants' contacts in New Jersey. A sworn Affidavit by Isidor Farash was included with Appellant's Appellate Brief, prior to the decision of the Appellate Court in September 2000. The Appellate Decision down-played the relevance of the evidence of diversity, which was said to be lacking by Judge Walls' in his ruling. Instead, the Appellate Court highlighted the fact that in its opinion, Plaintiff had not met the burden of showing that the Defendants had intended for their actions to provide them with privileges in the state of New Jersey, including the right of being sued there.

Judge Walls' decision contained factual errors. Petitioner did not lose the case of *Farash v. Jackson.* The Petitioner did provide evidence in regards to the motion to dismiss. It is respectfully submitted that it was the court, not the Plaintiff which truncated the discovery of facts in regards to the contacts of the defendants giving rise to personal jurisdiction.

REASONS FOR GRANTING THE WRIT

I.

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINIONS OF THE LOWER COURTS ARE INCONSISTENT IN REGARDS TO THE NATURE AND QUALITY OF CONTACTS NEEDED FOR IN PERSONAM JURISDICTION.

The Petitioner Isidor Farash's petition for writ of certiorari should be granted so as to allow this honorable court the opportunity to resolve the law in regards to what contacts are needed for a proper assertion of *in personam* jurisdiction.

Petitioner respectfully submits that this court has used its discretion to resolve jurisdictional disputes. In *Hanna v. Plumer*, 380 U.S. 460 (1965), the Supreme Court granted certiorari in a matter involving a jurisdictional dispute. The Court was then concerned that the decisions of the lower courts may cause a threat to the goal of uniformity and decided to grant certiorari. It is quite clear that in regards to disputes over *in personam* jurisdiction, there is no uniformity of law. In fact, this matter would allow the court to speak to the requirements for such jurisdiction in the modern age.

In *Hagans v. Lavine*, 415 U.S. 528 (1974), the Supreme Court granted certiorari in order to determine whether a District Court had jurisdiction of an action brought under 42 U.S.C. § 1983, by recipients of public assistance who were challenging a state regulation. The Plaintiffs in *Hagans* claimed that a state regulation which permitted the State to recoup prior unscheduled emergency rent payments from

subsequent welfare grants under the cooperative Federal-State Aid to Families with Dependent Children program, violated the Fourteenth Amendment of the United States Constitution. The Court declared that the Plaintiff's constitutional claim was of sufficient substance to support federal jurisdiction.

It is respectfully submitted that the within case involves a sufficient constitutional claim that would permit jurisdiction in the Federal Court. The Petitioner's rights to a fair trial under both the Fifth and Fourteenth Amendments of the United States Constitution were nullified by the actions of the Defendants in the State of Maine. In essence, Plaintiff's civil rights have been violated. The Supreme Court has outright capacity over the actions of both the State courts and the lower Federal courts. It is submitted that the granting of the writ in this case would not only afford this court the opportunity to resolve disputes amongst the courts in regards to jurisdiction, it would also give the Federal Court a chance to correct the civil rights violations committed by the bench and bar of the State of Maine against the Petitioner.

It is submitted that the decision of the District Court to dismiss the matter for a purported lack of personal jurisdiction and the affirmance of that decision by the Third Circuit is inconsistent, if not contradictory, to decisions of both this Court and the Third Circuit itself. Petitioner has consistently argued that the actions of the Defendants were intended to damage the Plaintiff in his home state of New Jersey. The Complaint of the Plaintiff Farash alleges that the Defendants acted purposefully and in conspiracy to deny the Plaintiff the ability to litigate fairly in the State of Maine.

In *Calder v. Jones*, 465 U.S. 783 (1984), the Court held that a writer of a purportedly libelous article and her publisher who resided in Florida could be haled into a Federal Court in California. The Court was concerned with the effect of the libelous article on the life and career of the entertainer, Shirley Jones. The Court held that although the writer of the supposedly libelous article had only one time before traveled to California prior to the publication of the article, jurisdiction in California was appropriate because the intentional conduct in Florida of writing the article was allegedly calculated to cause injury to Ms. Jones in California. The Court found that the State of California was the focal point of both the allegedly libelous article and the harm suffered. Jurisdiction was thereby proper in California based on the "effect" of the Defendant's Florida conduct in California. A key aspect of the Court's decision was the fact that the Petitioners were not charged with mere untargeted negligence. Rather, the Petitioners' allegedly tortious actions were expressly aimed at the Respondent in California. The Petitioners allegedly knew that the article would have a potentially devastating impact upon the respondent, and that the brunt of any injury suffered by the Respondent would occur in California where the Respondent worked and lived. Under these circumstances, the Petitioner should have reasonably anticipated that they would be haled into court in California.

In the instant matter, Petitioner is alleging that the Respondents knew that their intentional conspiratorial acts would effect him in the State of New Jersey where he resides. The Respondents are not charged with untargeted negligence. Rather, they acted in concert to deprive a New Jersey resident of his civil and constitutional rights. While the basis for Personal Jurisdiction in the *Calder v. Jones* matter was the

effect of one single act, a minimum of 24 separate acts of intentional misconduct, are alleged to form the basis for Petitioner's action. The Supreme Court noted in *Calder* that the due process clause permits personal jurisdiction over a Defendant in any State with which the Defendant has "certain minimum contacts . . . such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316. In judging minimum contacts, a court properly focuses on the relationship among, the Defendant, the forum, and the litigation. *Shaffer v. Heitner*, 433 U.S. 186, 204.

It is submitted that traditional notions of fair play and substantial justice are not offended by the maintenance of this action in the State of New Jersey. The relationship amongst the parties obviously points to the fact that the tortious activities of the Defendants would harm the Plaintiff in New Jersey. The Respondents cited the case of *Gelineau v. New York University Hospital*, 375 F. Supp. 661 (D.N.J. 1974) in its brief in opposition to the Petitioner's appeal to the Third Circuit. In *Gelineau*, the Court held that its jurisdiction did not reach a New York defendant, who rendered medical treatment in New York to a New Jersey resident. It was held that the Out-of-state defendant hospital did not have the necessary minimum contacts with the State on which to base *in personam* jurisdiction. The Court in *Gelineau* found that the treatment was personal to the Plaintiff. The fact that the Plaintiff might have carried the allegedly negligent treatment that was received in New York back to New Jersey, did not suffice to extend jurisdiction to New Jersey.

The facts of the instant case are vastly different from *Gelineau*. This is a case involving intentional and illegal

conduct by attorneys, not medical malpractice. It is unclear from the *Gelineau* decision if it was meant to apply to contract work in the legal field, which might be available in a variety of different states, or more static court appearances. Identical medical treatment is usually available in all fifty U.S. states, or in the rare occasion, in a few of the states. Even if the medical treatment is new or rare and only available in one location, that ruling has not addressed the important fact that the state where it would be found is purely fortuitous. Of paramount importance is the fact that faulty medical treatment is generally not considered intentional.

The instant matter is a conspiracy action. It is a claim that the offending parties were in agreement on the outcome and the methods in which they prevented the injured party from obtaining a fair trail and appeal. To guarantee the Defendants their choice of home court is to limit if not to extinguish the potential objectivity of the fact finders. No other profession is granted this advantage.

The decision of the Third Circuit herein that the Defendant parties must have purposely availed themselves of the privilege of conducting activities within the forum state, therefore unfairly prejudices Petitioner. In this context, it is the same as a ruling that the Respondents get to pick and choose their judges, jurors and adversarial counsel. As a practical matter, that they get to appoint Petitioner as his own adversarial counsel, since none of the members of the local Maine Bar would dare to involve themselves. If for no other reason, interstate jurisdiction should be implemented as a way to counteract this advantage which legal professionals have. It is clear that the holdings of both the District and Third Courts in this case did not properly appreciate the significance of the Court's holding in *Calder*.

The holdings of these lower Federal courts in this case concentrated almost exclusively on whether the Defendants had ever set foot in New Jersey. In fact, Petitioner argued in his pleadings that these courts should consider the effect that Respondent's intentional conduct had on the Petitioner, the damage it caused him in the State of New Jersey and the detrimental effects such conduct has on the entire Federal system. This argument is not addressed at all in the opinions of the lower Federal courts.

There are also some apparent conflicts in the Third Circuit's decision in this matter, compared with other decisions it has rendered, as to when *in personam* jurisdiction is properly invoked. In *Carteret Savings Bank, F.A. v. Shushan*, 954 F.2d 141 (3d Cir. 1992), the Third Circuit held that under the New Jersey Long-Arm Statute, a District Court had personal jurisdiction over a non-resident attorney, who committed a fraud by deliberately failing to disclose certain information concerning a Louisiana construction project, for which the client was a lender. The Plaintiff, Carteret Savings, was a bank based in New Jersey that retained Defendant, a Louisiana lawyer, to represent its interests in a contractual transaction. Defendant allegedly breached his fiduciary duty to Carteret in drafting a contract concerning the construction project. The Louisiana lawyer both telephoned and corresponded with Plaintiff's bank managers who worked in New Jersey. Defendants did travel to New Jersey to meet with Carteret's management in preparation of the closing of the transaction. Under the so-called "effects" test, the Third Circuit held that the District Court of New Jersey had jurisdiction over the Louisiana lawyer and his firm. The Third Circuit stated in pertinent part:

> Under the effects test, a court may exercise personal jurisdiction over a non-resident defendant who acts

> outside the forum state to cause on effect upon the plaintiff within the forum state. 954 F.2d at 148.

It is submitted that under the "effects" test as stated by both this Court and the Third Circuit, personal jurisdiction over the Defendants in New Jersey is just and proper. New Jersey's long-arm statute provides for personal jurisdiction as far as is permitted by the Fourteenth Amendment to the United States Constitution. *See* New Jersey Court Rule 4:4-4. As such, the question of whether the District of New Jersey has jurisdiction over the Defendants is properly determined by Federal constitutional law. *See Mesalic v. Fiberfloat Corp.*, 897 F.2d 696, 698 (3d Cir. 1990). It is thereby submitted that this Court can best resolve any conflict between the decision of the Third Circuit in this case and other decisions.

II.

THE PROCEDURES UNDERTAKEN BY THE DISTRICT COURT IN DETERMINING THE RESPONDENTS' MOTION TO DISMISS WERE SO FAULTY AS TO RESULT IN A DENIAL OF PETITIONER'S RIGHTS TO A FAIR HEARING.

The Petitioner, Isidor Farash, had asked that the trial court conduct both an oral argument and evidentiary hearing while deciding the Respondents' motion to dismiss. These procedures would have afforded the Petitioner the opportunity to question the Respondents and their counsel as to their contacts with the State of New Jersey. Also, the Respondents could have been questioned as to their knowledge of the particulars of Petitioner's life. Obviously information could have been revealed as to the Respondents' knowledge of the impact of their actions upon the Petitioner and the effects of these actions on the State of New Jersey.

Oral argument was not granted by the District Court, nor was an evidentiary hearing. The District Court did not advise of the denial of such procedures until immediately prior to the date of the hearing. Although the hearing was originally scheduled for June 28, 1999, the decision of Judge Walls of the District Court was not rendered until December, 1999. There obviously was ample time to undertake these procedures, in an effort to provide as much information as possible, prior to the court rendering its decision.

Judge Walls' opinion stated that the Plaintiff failed to sustain his burden of showing that there were sufficient minimum contacts between the Defendants and New Jersey to warrant in personam jurisdiction.

The Third Circuit in *Carteret Savings Bank, F.A. v. Shushan*, 954 F.2d 141 at 142 n.1 (3d Cir. 1992) stated clearly that in order to resolve a jurisdictional dispute, a court must accept as true the allegations of a Complaint and resolve disputed issues of fact in favor of a Plaintiff, when no evidentiary hearing is conducted. Yet, Judge Walls did not consider the pleadings that were before him and decided to dismiss the matter, without any evidentiary hearing.

An evidentiary hearing in this case could have served many valuable purposes. One of the primary questions to be considered when a court assesses the viability of an interstate action, relates to the question of whether any of the Defendants reached across state lines to intentionally damage a resident of a different state. Without an evidentiary hearing, the applicability of the question cannot be assessed. Since there was no hearing conducted in this matter, the Court has, in essence, set forth a procedural parameter that is outside the scope of litigants to function within. A party has been

denied a full and fair opportunity to litigate, when state procedures fall below the minimum requirements of due process as defined by the federal law and the United States Constitution. *Kelly v. Borough of Sayreville*, 927 F. Supp. 979 (D.N.J. 1996), *aff'd*, 107 F.3d 1073.

For example, the Plaintiff Isidor Farash received verbal information from one of the Maine Superior Court Clerks that Judge Brennan, one of the Respondents in this matter, had stepped outside of his usual role to preside over Farash's malpractice action against Andrew Doukas, Esq., another of the Respondents in this matter. Farash was informed that there was only one judge in the Cumberland County Court system that presided over legal malpractice actions at the time and it was not Judge Brennan.

The above information is, of course, hearsay. However, a simple yes or no question, directed at any of the three representatives of the State of Maine who were named in the Complaint would have revealed the answer to this question. The answer would have either elevated the hearsay allegation into a fact, or if false, dispensed with it completely. Since these types of allegations speak directly to one of the primary jurisdictional questions, namely, if the Defendants directed their actions across state lines, the absence of any evidentiary hearing serves to render that important jurisdictional question moot.

One of Petitioner's arguments has consistently been that due process is not available to him if he is forced to conduct his trial within the Maine Court system. These arguments involved the fact that numerous Maine lawyers have been contacted and none would represent Isidor Farash. Nor would any of the many contacted, act as local counsel for an action

in Maine brought by Farash's New Jersey counsel. Petitioner asserts that this situation resulted from the fact that powerful Maine legal officials were being challenged in court. Petitioner also argued in his pleadings that the circumstances of this action would intimidate a Maine jury from fairness and impartiality.

Respondents never disputed these allegations and since no hearing was conducted, these allegations should have been accepted as true, along with Plaintiff's other allegations involving jurisdictional issues. The refusal of the Court to hold an evidentiary hearing under these conditions, violated the Petitioner's constitutional rights to a fair hearing.

Petitioner is an average citizen. He has expended tremendous effort and expense to maintain these referenced actions over 15 years time. The failure of the Trial Courts to provide the requested evidentiary hearings, goes beyond simple procedural options to which judges are normally entitled. The Fourteenth Amendment to the United States Constitution does not use the words Equal Treatment to describe what every citizen is entitled to. The ratified wording states that every citizen is entitled to Equal Protection. Petitioner submits that there are two distinctions. First, Protection is defined as, "the supervision or support of one that is weaker." *Merriam-Webster's Dictionary, Home & Office Edition* (1998). Second, the exact meaning of the word "Protection" is dynamic by nature. It varies depending on the circumstances. Equal Treatment might be satisfied if both parties, in this example, were denied an evidentiary hearing. However, Equal Protection might not be satisfied under those conditions because the Defendants actually gained through

the absence of a hearing. Here, the stronger party is rendered stronger and the weaker party is further dispossessed of their rights. It is submitted that the Equal Protection clause implies that the entirety of the United States Judicial System exists for the protection of those who use it. However, given the jurisdictional constraints imposed by the Appellate Division, combined with the wide latitude granted judges through their immunity doctrines, the Equal Protection clause is effectively paralyzed, if not rendered thoroughly moot.

III.

THE PETITION SHOULD BE GRANTED SO AS TO ALLOW THE COURT TO REEVALUATE THE EFFECT OF THE JUDICIAL IMMUNITY DOCTRINE ON INDIVIDUALS SEEKING A FAIR TRIAL UNDER THE UNITED STATES CONSTITUTION.

Two of the Respondents in this case are judges. Petitioner in his Complaint alleges that these judges have illegally conspired to deprive him of his rights as an out-of-state litigant in Maine. The Fourteenth Amendment of the United States Constitution, forbids any discrimination against a litigant in the courts of any state. The Fourteenth Amendment states in pertinent part:

> Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of

> law, nor deny to any person within its jurisdiction the equal protection of the law . . .

Despite the clear intention of the Fourteenth Amendment to end disparate treatment of citizens by the various states, the doctrine of judicial immunity has provided a refuge by which jurists can discriminate against litigants. The concept of judicial immunity is deeply rooted in Anglo-American law. *Bauers v. Heisel*, 361 F.2d 581 (3d Cir. 1966), *cert. denied*, 386 U.S. 1021. Few doctrines are more solidly established at common law than immunity of judges from liability for damages for acts committed within their judicial jurisdiction. *Friedland v. Fauver*, 6 F. Supp. 2d 292 (D.N.J. 1998).

It is submitted, though, that this doctrine should be re-examined in light of the facts of this case. It is assumed that errors, mistakes, judicial bias or even prima facie corruption, can be addressed on an appeal by litigants in the forum state. Yet, this case illustrates how easy it is for the appeals process to be disrupted and in fact intentionally scuttled, given the umbrella of protection afforded by the doctrine of judicial immunity. For example, it is alleged that Respondent Brennan delayed scheduling a hearing on an important motion to vacate a previous ruling for one year, then denied the motion while intentionally withholding the notice of same until the time for the filing of an appeal had expired.

Without the judicial immunity doctrine, Petitioner might have acted to remedy these problems with a far less complex suit against one or more of the judges. A suit could have been brought without the bar of judicial immunity. In this case, the Plaintiff is forced to rely on a jury appreciating the high unlikelihood that the various and many alleged instances

of official misconduct, occurred solely by happenstance. Petitioner would therefore be required to prove that lawyers and judges conspired to commit criminal wrong doing against him. The lack of any willing attorney to represent Petitioner, along with the intimidation factor of a local jury being asked to sit in judgment of their own government's officials, would then become exceedingly prejudicial. In fact, without the judicial immunity doctrine, Petitioner might have been able to pursue a far simpler claim in the Maine Federal District, without the need to pursue New Jersey jurisdiction.

Petitioner respectfully submits that one adverse effect of the Judicial Immunity Doctrine which may not have been foreseen by this Court, is the practical reality that the immunity in question is easily extended to immunize members of the bar. To rule out New Jersey jurisdiction in this case would foreclose any and all rights of the Petitioner to a fair trial.

The concept of Judicial Immunity was adopted and continues to be reaffirmed, to shield the judiciary in their official rulings from possible intimidation by litigants. However, judges can be replaced. What can not be as easily replaced is the confidence of the citizenry in a fair and impartial Judicial Branch of their government. In the August 12, 2000 issue of the Portland (Maine) Press Herald, the Chief of Police, Michael Chitwood is quoted as stating that "if you're affluent and connected, you're treated differently than if you're poor and downtrodden." He was referring to a case where a local attorney, failed to be indicted under child endangerment laws. He stated that "The facts as we know them in the department should have led to criminal charges . . ." Either true or false, by the time police chiefs are making such statements before the press, public confidence in the entire judicial branch must be approaching collapse.

CONCLUSION

Petitioner asks the Court to consider a question requiring determination in this modern technological age. Is a Party that has conducted a financially substantial amount of business in one jurisdiction immune from suit in that jurisdiction, due to the fact that the party has largely acted in another jurisdiction? Should personal jurisdiction be found over an individual only when that individual has actually set foot in a jurisdiction, in spite of the fact that party has benefited in another jurisdiction and knows that his purposeful actions will have an adverse effect on an individual in the other jurisdiction? By granting the Petitioner Farash's petition for certiorari, this court can correct the Third Circuit's decision, which questions both this Court's long-standing precedence and the modern realities of interstate dealings. The granting of this writ allows the Court to speak to the conditions and standards for the finding of personal jurisdiction. Not only are the various Circuit Courts in conflict as to the standards for a finding that a District Court has *in personam* jurisdiction, the Third Circuit's own opinions reflect an uncertainty as to when personal jurisdiction is properly invoked.

Granting of the Petitioners writ would also allow this court to consider the long term effect of its various procedural guidelines, and those mirrored by the states, which may have unintentionally fostered a sense of disenchantment or distrust between the citizens and their intended safety net, the court system.

Accordingly, petitioner Farash respectfully requests that the petition of writ of certiorari be granted.

Respectfully submitted,

ISIDOR FARASH, ESQ.
Petitioner, Pro Se
17 Woodside Avenue
Emerson, N.J. 07630
(201) 807-1990

APPENDIX

APPENDIX A — MEMORANDUM OPINION AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DATED AND FILED SEPTEMBER 13, 2000

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 00-5051

ISIDOR FARASH,

Appellant

v.

KERMIT LIPEZ, HON.; ARTHUR G. BRENNAN, HON.; WENDELL LARGE, ESQ.; ANDREW DOUKAS, ESQ.; ROBERT MITTEL, ESQ.; THE ADMINISTRATIVE OFFICE OF THE COURTS OF THE STATE OF MAINE; JOHN CONNOR

On Appeal from the United States District Court
for the District of New Jersey
D.C. Civil No. 98-cv-05795
District Judge: Honorable William H. Walls

Submitted Pursuant to Third Circuit LAR 34.1(a)
September 11, 2000

Before: McKee, Rendell & Stapleton, *Circuit Judges*

(Filed: September 13, 2000)

Appendix A

MEMORANDUM OPINION

McKee, *Circuit Judge.*

Isidor Farash, appeals the district court's dismissal of his claims against each of the defendants based upon the district court's determination that it lacked *in personam* jurisdiction. We will affirm.

Inasmuch as we write only for the parties, we need not reiterate the factual or procedural background of this dispute. We have reviewed the briefs of the parties and the opinion of the district court filed December 17, 1999. We will affirm substantially for the reasons set forth in the district court's opinion.

The district court dismissed the instant action based upon "the absence, of evidence or even allegations that the defendant's possess some nexus to New Jersey, . . ." District Ct. Opinion at 4. In his brief to us, the plaintiff apparently seeks to spackle over the fatal crack in his pleadings by alleging, "it should be pointed out that the plaintiff has maintained that plaintiff paid these defendants with checks drawn on New Jersey banks. This fact has not been refuted by the defendants." Appellant's Br. at 15. However, this allegation falls far short of the constitutional mandate that is a prerequisite *in personam* jurisdiction. That prerequisite is that "the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." *Burger King Corporation v. Rudzewicz*, 471 U.S. 462, 475 (1985) (quoting *Hanson v. Denckla*, 357 U.S. 235 (1958)).

Appendix A

Accordingly, we will affirm the district court's dismissal for lack of jurisdiction.

TO THE CLERK:

Please file the foregoing opinion.

By the Court:

/s/ Theodore A. McKee
Circuit Judge

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 00-5051

ISIDOR FARASH,

Appellant

v.

KERMIT LIPEZ, HON.; ARTHUR G. BRENNAN, HON.; WENDELL LARGE, ESQ.; ANDREW DOUKAS, ESQ.; ROBERT MITTEL, ESQ.; THE ADMINISTRATIVE OFFICE OF THE COURTS OF THE STATE OF MAINE; JOHN CONNOR

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District Judge: Honorable William H. Walls

Submitted Pursuant to Third Circuit LAR 34.1(a)
September 11, 2000

Before: McKee, Rendell & Stapleton, *Circuit Judges*

JUDGMENT

This cause came to be considered on the record from the United States District Court for the District of New Jersey and was **submitted** pursuant to Third Circuit LAR 34.1(a) on September 11, 2000.

Appendix A

On consideration whereof, it is now here ORDERED AND ADJUDGED by this Court that the judgment of the District court entered December 21, 1999 be, and the same is, hereby affirmed. All of the above in accordance with the opinion of this Court.

Costs taxed against appellant.

ATTEST:

s/ Marcia M. Waldron
CLERK

DATED: September 13, 2000

APPENDIX B — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY DATED DECEMBER 16, 1999 AND FILED DECEMBER 17, 1999

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civ. Action No. 98-5795

ISIDOR FARASH,

Plaintiff,

v.

HON. KERMIT LIPEZ, HON. G. ARTHUR BRENNAN, WENDELL LARGE, ESQ., ANDREW DOUKAS, ESQ., ROBERT MITTEL, ESQ., JOHN CONNOR, ESQ., and THE ADMINISTRATIVE OFFICE OF THE COURTS OF THE STATE OF MAINE,

Defendants.

OPINION

Walls, District Judge

This matter is before the court on the motions to dismiss the complaint by: (1) defendants Connor and Mittel; (2) defendants Lipez, Brennan, and the Administrative Office of the Courts of the State of Maine; (3) defendant Doukas; and (4) defendant Large. Pursuant to Fed. R. Civ. P. 78, these motions are decided without oral argument. Each of these motions to dismiss is granted.

Appendix B

FACTUAL AND PROCEDURAL HISTORY

Plaintiff Isidor Farash filed the original complaint in this action on December 18, 1998. The 12-count complaint charges that the defendants, in their official and individual capacities, conspired to deprive the plaintiff of his due process rights, that they "impeded the plaintiff's ability to obtain a fair trial outside of his home state" in contravention of the Fourteenth Amendment, and that they made various fraudulent misrepresentations. The complaint names the following defendants: Hon. Kermit Lipez, a judge of the First Circuit Court of Appeals who previously served as a judge of the Superior Court of Maine; Hon. G. Arthur Brennan, a judge of the Superior Court of Maine; Wendell Large, John Connor, and Robert Mittel, attorneys practicing in Maine; and the Administrative Office of the Courts of the State of Maine. These defendants served as the acting judges, opposing counsel, plaintiff's counsel, plaintiff's expert witness, and the judicial administrative office in connection with various litigation which Farash prosecuted in Maine and which, it appears, he lost. Such litigation included a personal injury action arising from an automobile accident (*Farash v. Jackson*), a professional malpractice and insurance coverage action (*Farash v. Clark Associates*), and another legal malpractice action (*Farash v. Doukas*). On January 12, 1999, before any defendant had answered or otherwise moved, plaintiff submitted an amended complaint that is an exact replica of the original document, except that the date on the amended complaint was changed to reflect the new filing date.

All defendants now move, by four separate motions, to dismiss *Farash v. Lipez, et al.*. They assert variously that

such relief is appropriate because of the plaintiff's failure to state a claim for relief, improper venue, absolute judicial immunity, and lack of personal jurisdiction.

DISCUSSION

1. Personal Jurisdiction over the Individual Defendants

Defendants Connor, Mittel, Lipez, Brennan, Doukas, and Large move to dismiss on the basis that this court lacks personal jurisdiction. Pursuant to Federal Rule of Civil Procedure 4(e), federal district courts have personal jurisdiction over non-resident defendants "to the extent authorized under the law of the forum state in which the district court sits." *See Sunbelt Corp. v. Noble, Denton & Associates, Inc.*, 5 F.3d 28, 31 (3rd Cir. 1993). New Jersey's long arm statute provides for personal jurisdiction as far as is permitted by the Fourteenth Amendment to the United States Constitution. *See* New Jersey Court Rule 4:4-4; *Carteret Savings Bank, FA v. Shushan*, 954 F.2d 141, 145 (3rd Cir. 1992). Therefore, the question of whether this Court has jurisdiction over the defendants is determined by federal constitutional law. *See Mesalic v. Fiberfloat Corp.*, 897 F.2d 696, 698 (3rd Cir. 1990).

The Fourteenth Amendment permits a state to exercise jurisdiction over out-of-state defendants only where "the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (quoting *Hanson v. Denckla*, 357 U.S. 235 (1958)).

Appendix B

If a defendant challenges an action for lack of personal jurisdiction, the burden is on the plaintiff to prove, by a preponderance of the evidence, facts sufficient to establish personal jurisdiction. *Carteret Savings Bank*, 954 F.2d at 146. Here, the plaintiff has produced no evidence that any defendant committed a tortious act in New Jersey, entered a contract in New Jersey, owned property or conducted business in New Jersey — he has not even shown that any defendant has ever entered this state.

The plaintiff's claim that he is a New Jersey resident, and that his civil rights were injured by some defendants, does not suffice. Pl. Br. at 7, 9. *See Gelineau v. New York University Hospital*, 375 F.Supp. 661 (D.N.J. 1974) (ruling that personal jurisdiction could not attach to out-of-state hospital defendant where patient plaintiff unilaterally sought medical treatment from defendant, and defendant did no business in New Jersey, had no office or business agents in New Jersey, and held no property in New Jersey; holding that when a plaintiff seeks out personal services and travels out of state to obtain them, "it would be fundamentally unfair to permit a suit in whatever distant jurisdiction the patient may carry the consequences of his treatment, or the client the consequences of his advice received.") Likewise, in the absence of evidence or even allegations that the defendants possess some nexus to New Jersey, plaintiff's reiteration of the defendants' alleged misconduct cannot give rise to personal jurisdiction. Pl. Br. at 7-10. Finally, the court rejects the plaintiff's unsupported claim that defendants Connor and Mittel communicated with Farash in New Jersey and were paid with New Jersey checks, and that the attorney defendants sent correspondence to the plaintiff in New Jersey. Pl. Br. at

13-14. The plaintiff must sustain his burden of proof "through sworn affidavits or other competent evidence"; no such evidence was here provided. *Time Share Vacation Club v. Atlantic Resorts, Ltd.*, 735 F.2d 61, 66 n.9 (3rd Cir. 1984).

Plaintiff's argument that the court has "impersonal jurisdiction" over the defendants will not survive this motion. The cases relied upon by plaintiff are readily distinguished. For example, in contrast to *Charles Gendler & Co., Inc. v. Telecom Equipment Corp.*, 102 N.J. 460 (N.J. 1986), plaintiff here offers no evidence that the "stream of commerce" theory of personal jurisdiction should apply because any defendant has distributed products into New Jersey, directly or indirectly. Because the plaintiff cannot prevail in the complete absence of any evidentiary showing, all other authority cited by him is rejected. *See Time Share Vacation Club, supra*; *see also Stranahan Gear Co., Inc. v. NL Industries, Inc.*, 800 F.2d 53, 58 (3rd Cir. 1986) (cursory allegation reiterated in a sworn affidavit is insufficient to satisfy the plaintiff's burden of proof).

The motion by defendants Connor, Mittel, Lipez, Brennan, Doukas, and Large to dismiss the complaint for lack of personal jurisdiction is granted. The court need not and does not address any other proffered basis for dismissal.

2. Motion to Dismiss by Administrative Office of the Courts of the State of Maine

The sole remaining defendant is the Administrative Office of the Courts ("AOC") of the State of Maine. That defendant moves to dismiss for lack of personal jurisdiction

and improper venue, and also asserts that it is entitled to Eleventh Amendment immunity.

Here again, the plaintiff has produced no evidentiary basis upon which this court could determine that personal jurisdiction is appropriate. The complaint alleges that the AOC improperly destroyed trial transcripts of the *Farash v. Jackson* trial (Count IX), and denied plaintiff access to transcripts in the *Farash v. Clark* matter by requiring him to file an appellate brief before releasing the transcripts (Count X), and that the AOC's policy that the Maine Supreme Court may rule without issuing a written opinion "hampered the ability of the Plaintiff to respond by means of ancillary or federal appeals and served to discriminate against the Plaintiff because of his out of state residence (Count XI). Neither the complaint, the amended complaint, nor plaintiff's brief includes any evidentiary submissions whatsoever. Accordingly, for the same reasons as discussed above regarding the individual defendants, the motion for dismissal for lack of personal jurisdiction by the Administrative Office of the Courts of the State of Maine is granted.

CONCLUSION

The motions to dismiss the complaint for lack of personal jurisdiction by defendants Connor, Mittel, Lipez, Brennan, Doukas, Large, and the Administrative Office of the Courts of the State of Maine are granted.

s/ William H. Walls
William H. Walls, U.S.D.J.

Appendix B

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civ. Action No. 98-5795

ISIDOR FARASH,

Plaintiff,

v.

HON. KERMIT LIPEZ, HON. G. ARTHUR BRENNAN, WENDELL LARGE, ESQ., ANDREW DOUKAS, ESQ., ROBERT MITTEL, ESQ., JOHN CONNOR, ESQ., and THE ADMINISTRATIVE OFFICE OF THE COURTS OF THE STATE OF MAINE,

Defendants.

ORDER

Walls, District Judge

This matter is before the court on the motions to dismiss the complaint by: (1) defendants Connor and Mittel; (2) defendants Lipez, Brennan, and the Administrative Office of the Courts of the State of Maine; (3) defendant Doukas; and (4) defendant Large. Upon consideration of the submissions of the parties and for the reasons stated in the accompanying opinion,

Appendix B

It is on this 16th day of December, 1999:

ORDERED that the motions to dismiss the complaint by all defendants for lack of personal jurisdiction are granted.

s/ William H. Walls
William H. Walls, U.S.D.J.